

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>ROBERT G. HALL</b>	)	
Claimant	)	
VS.	)	
	)	
<b>PENNY CONSTRUCTION COMPANY, INC.</b>	)	Docket No. 1,015,228
Respondent	)	
AND	)	
	)	
<b>KANSAS BUILDING INDUSTRY WORKERS COMPENSATION FUND</b>	)	
Insurance Carrier	)	

**ORDER**

Respondent appeals the July 6, 2005 Award of Administrative Law Judge Brad E. Avery. Claimant was awarded benefits for a 30 percent functional impairment to the left upper extremity at the 200-week level for injuries suffered while employed with respondent. The Appeals Board (Board) heard oral argument on October 18, 2005.

**APPEARANCES**

Claimant appeared by his attorney, Chris Miller of Lawrence, Kansas. Respondent and its insurance carrier appeared by their attorney, Roy T. Artman of Topeka, Kansas.

**RECORD AND STIPULATIONS**

The Board has considered the record and adopts the stipulations contained in the Award of the Administrative Law Judge (ALJ).

**ISSUES**

What is the nature and extent of claimant's injury?

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Having reviewed the entire evidentiary file contained herein, the Board finds the Award of the ALJ should be affirmed.

Claimant, a concrete finisher, was employed with respondent when on March 25, 2003, while jumping from the back of a truck, he got his ring caught on the side of the truck, resulting in the ring finger on his left hand being pulled off.<sup>1</sup> Claimant was seen in the emergency room at Shawnee Mission Medical Center. Claimant underwent a shortening of the proximal phalanx with revision of the amputation, with surgery performed by William O. Reed, Jr., M.D. Claimant was seen on several occasions after developing a wound infection.

Ultimately, claimant's treatment was transferred to Neal D. Lintecum, M.D., an orthopedic surgeon. Dr. Lintecum first examined claimant on July 23, 2003. Dr. Lintecum found claimant with a healed amputation of the left ring finger, sensitivity at the stump of the amputation site and ongoing hand problems on the left side. He diagnosed claimant with severe left carpal tunnel syndrome, which Dr. Lintecum determined was connected to claimant's work activities following his return to work with respondent. Dr. Lintecum ultimately performed a carpal tunnel release on October 20, 2003. By December 19, 2003, claimant indicated he was much improved, but still had some tingling to the tips of his fingers.

Dr. Lintecum found claimant to have suffered a 9 percent impairment to the hand as it relates to the March 25, 2003 ring avulsion injury. He acknowledged claimant had carpal tunnel syndrome, but provided no rating for that condition. Dr. Lintecum's rating was pursuant to the fourth edition of the *AMA Guides*.<sup>2</sup>

Claimant was examined by Edward J. Prostic, M.D., a board certified orthopedic surgeon, at the request of claimant's attorney. Dr. Prostic first examined claimant on March 22, 2004, at which time he diagnosed claimant with post finger amputation, post carpal tunnel surgery and signs and symptoms at the thoracic outlet, cubital tunnel and pronator tunnel. He stated that claimant sustained a degloving injury with the amputation of his ring finger and subsequently developed peripheral nerve entrapment at several levels. He assessed claimant an 18 percent impairment to the left upper extremity at the level of the shoulder. Dr. Prostic examined claimant a second time on January 21, 2005, at which time his diagnosis changed due to the fact that claimant no longer had evidence of trapping of the nerves at the thoracic outlet, cubital tunnel or pronator tunnel. He opined

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<sup>1</sup> P.H. Trans. at 8.

<sup>2</sup> American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4th ed.).

that claimant's impairment had increased to 23 percent to the left upper extremity at the level of the shoulder as a result of his work-related injuries.<sup>3</sup>

Dr. Prostic acknowledged that his rating went to the left upper extremity at the level of the shoulder, but further acknowledged that the entire rating dealt with the 20 percent for a moderate carpal tunnel syndrome and 10 percent for the absence of the finger on the left hand. There were no symptoms relating to claimant's shoulder at the time of Dr. Prostic's second examination.

Claimant was referred to board certified orthopedic surgeon Mary Ann Hoffmann, M.D., for an independent medical examination at the Order of Judge Avery. This independent medical examination referral came as a result of an Order dated January 25, 2005, and was "for evaluation and disability rating regarding an alleged work-related injury sustained by claimant allegedly with this respondent, and recommendations regarding what future medical treatment is appropriate, if any." Dr. Hoffmann then responded with two reports, the first dated February 7, 2005, to Judge Avery. In that report, she described the conditions which she found, including carpal tunnel syndrome; amputation of the left ring finger; and bursitis and tendinitis of the left shoulder. She then provided a second report dated February 25, 2005, again to Judge Avery, with the appropriate functional impairment rating. Dr. Hoffmann found claimant to have a 30 percent impairment to the left upper extremity with her impairment resulting from claimant's residual carpal tunnel syndrome, pain from the radial palmar digital nerve of the ring finger and ulnar palmar digital nerve of the ring finger, and the amputation of claimant's ring finger. There is no impairment given by Dr. Hoffmann for either the bursitis or tendinitis of the left shoulder.

Respondent argues that claimant has failed to prove any impairment to the left upper extremity from the March 25, 2003 accident, with the exception of the amputation for which claimant should receive a 9 percent impairment to the hand. Claimant argues that the development of the carpal tunnel syndrome was a direct result of the amputation or, in the alternative, resulted from claimant's return to work for respondent after the injury and resulting surgeries.

The E-1 Application For Hearing filed by claimant on February 9, 2004, lists the date of accident "on or about March 25, 2003, and each and every day worked since." The injuries alleged on that E-1 include the left ring finger, hand, arm, shoulder, neck and all affected areas.

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<sup>3</sup> While the *AMA Guides* are mentioned during Dr. Prostic's Deposition, the specific edition is not identified.

At regular hearing, the ALJ, when discussing the stipulations, described an accident date of March 25, 2003. Respondent, in its submission letter to the ALJ, argues that any developing carpal tunnel syndrome was the result of claimant leaving respondent's employment in December of 2003 and beginning work first for Henderson Construction and then for Goss Construction in 2004. Respondent further argues that any additional conditions developed in excess of the amputation are the result of those intervening employment relationships and not the direct and natural consequence of claimant's finger amputation from the injury on March 25, 2003.

In workers compensation litigation, it is the claimant's burden to prove his entitlement to benefits by a preponderance of the credible evidence.<sup>4</sup>

The Kansas Workers Compensation Act defines "accident" as,

. . . an undesigned, sudden and unexpected event or events, usually of an afflictive or unfortunate nature and often, but not necessarily, accompanied by a manifestation of force. The elements of an accident, as stated herein, are not to be construed in a strict and literal sense, but in a manner designed to effectuate the purpose of the workers compensation act that the employer bear the expense of accidental injury to a worker caused by the employment.<sup>5</sup>

The Kansas Workers Compensation Act defines "personal injury" and "injury" as,

. . . any lesion or change in the physical structure of the body, causing damage or harm thereto, so that it gives way under the stress of the worker's usual labor. It is not essential that such lesion or change be of such character as to present external or visible signs of its existence.<sup>6</sup>

It is clear from this definition that a manifestation of force is not necessary for an incident to be deemed an "accident."<sup>7</sup>

It has long been the rule that injury to a worker by a strain sustained in performing the usual tasks in the usual manner may constitute an accident within

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<sup>4</sup> K.S.A. 44-501 and K.S.A. 2002 Supp. 44-508(g).

<sup>5</sup> K.S.A. 2002 Supp. 44-508(d).

<sup>6</sup> K.S.A. 2002 Supp. 44-508(e).

<sup>7</sup> *Anderson v. Scarlett Auto Interiors*, 31 Kan. App. 2d 5, 61 P.3d 81 (2002).

the meaning of the worker's [sic] compensation act even though there be no outward and discernible force to which the resulting disability can be traced.<sup>8</sup>

In this instance, claimant has undergone more than a single traumatic accident. The incident on March 25, 2003, is clearly of a traumatic nature as it resulted in an immediate amputation of claimant's ring finger on his left hand. However, claimant's E-1 alleges not only that accident, but also a series each and every day thereafter, with injuries to claimant's left ring finger, hand, arm, shoulder and neck. Dr. Lintecum diagnosed claimant with carpal tunnel syndrome on the left side, which injury he determined claimant had suffered following his return to work. Dr. Lintecum assessed claimant a 9 percent impairment of the hand from the ring finger injury, but, for reasons unknown, failed to assess any impairment to the carpal tunnel syndrome, even though he acknowledged that it resulted from claimant's return to work.

Dr. Prostic determined that claimant had suffered permanent impairment both to the finger from the amputation and for the carpal tunnel syndrome. However, for reasons unknown, Dr. Prostic assessed his 23 percent impairment to the left upper extremity at the level of the shoulder, even though the shoulder conditions which developed earlier had subsided by the time Dr. Prostic examined claimant on January 21, 2005. There is also uncertainty as to which version of the *AMA Guides* Dr. Prostic utilized.

When the ALJ referred claimant to Dr. Hoffmann for an independent medical examination, the Order specifically requested evaluation and disability ratings regarding the alleged work-related injuries sustained by claimant with respondent. Dr. Hoffman, in her rating, assessed claimant an impairment for the carpal tunnel syndrome and the amputated finger, but assessed no impairment for any upper extremity conditions at the level of the shoulder, even though Dr. Hoffmann had earlier diagnosed both bursitis and tendinitis of the shoulder. This indicates that Dr. Hoffmann either did not consider those conditions to be rateable or, in the alternative, did not consider those conditions to be attributable to claimant's employment with respondent. Dr. Hoffmann's rating of 30 percent to the upper extremity at the 200-week level, in following the mandate of the ALJ to determine claimant's impairment as a result of his injuries suffered with respondent, is the most credible impairment rating in this record. The ALJ adopted Dr. Hoffmann's 30 percent to the upper extremity at the 200-week (forearm) level, and the Board affirms same.

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<sup>8</sup> *Demars v. Rickel Manufacturing Corporation*, 223 Kan. 374, 573 P.2d 1036 (1978).

**AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge Brad E. Avery dated July 6, 2005, should be, and is hereby, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of December, 2005.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Chris Miller, Attorney for Claimant  
Roy T. Artman, Attorney for Respondent and its Insurance Carrier  
Brad E. Avery, Administrative Law Judge  
Paula S. Greathouse, Workers Compensation Director